No. 24-10883

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

IN RE: JOSEPH F. LANGSTON JR.,
Debtor.

JOSEPH F. LANGSTON JR,
Appellant,
v.

DALLAS COMMODITY COMPANY,
Appellee.

On Appeal from the United States District Court
for the Northern District of Texas
No. 3:23-CV-01916-S
Hon. Karen Gren Scholer

AMICI CURIAE BRIEF OF THE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER AND THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS IN SUPPORT OF APPELLANT

February 14, 2025

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Langston v. Dallas, No. 24-10883

Pursuant to Fed. R. App. P. 26.1, *Amici Curiae*, the National Consumer Bankruptcy Rights Center and the National Association of Consumer Bankruptcy Attorneys, makes the following disclosure:

1) Is party/amicus a subsidiary or affiliate of a publicly owned corporation? If yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party. NO

2) Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list below the identity of the corporation and the nature of the financial interest. NO

This day of 14th February 2025.

/s/ *April Maxwell*
April Maxwell
Attorney for *Amici Curiae*

RULE 29(a)(2) STATEMENT

Counsel for *Amici* has contemporaneously filed a motion seeking leave of this Court to file this brief in support of the Appellant. *Amici* endeavored to obtain the consent of all parties to the filing of the brief before moving the Court for permission to file the proposed brief. Appellant has agreed to the filing of this brief. Appellee refused to consent.

This day of 14th February 2025.

/s/ *April Maxwell*
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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal.

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OTHER:

Various consumer bankruptcy debtors and their counsel nationally and in the Fifth Circuit, including the membership of the National Association of Consumer Bankruptcy Attorneys and the National Consumer Bankruptcy Rights Center.

This day of 14th February 2025.

Respectfully submitted,

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INTEREST OF *AMICI CURIAE*

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 1,500 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Bankruptcy Rights Center ("NCBRC") is a non-profit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. To those ends, it provides assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law importantly. Among other things, it submits amicus curiae briefs when in its view resolution of a particular case may affect consumer debtors throughout the country, so that the larger legal effects of courts' decisions will not depend solely on the parties directly involved in the case.

NCBRC and NACBA have filed amicus curiae briefs in numerous cases seeking to protect the rights of consumer bankruptcy debtors. See, e.g., *Lac du Lac du Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 143 S. Ct. 1689 (2023); *Diaz v. Viegelahn* (*In re Diaz*), 972 F.3d 713 (5th Cir. 2020); *Henry v. Educ. Fin. Serv.* (*In re Henry*), 944 F.3d 587 (5th Cir. 2019).

NCBRC, NACBA and NACBA's members have a vital interest in the outcome of this case to ensure the fair and just application of bankruptcy laws. A ruling in the case at bar will affect the administration of many consumer cases in this Circuit. The outcome of this case will have far-reaching consequences for the administration of consumer bankruptcy cases, particularly regarding the finality and predictability of exemption determinations. A ruling affirming the untimely objection would undermine the clear procedural safeguards established by Rule 2003(e) and Rule 4003, allowing indefinite adjournments of creditors' meetings and creating uncertainty for debtors regarding their exempt assets. Such uncertainty could disrupt financial rehabilitation by delaying the point at which debtors can rely on their exemptions and move forward with their lives. Conversely, enforcing the bright-line rule for concluding creditors' meetings will promote consistency, ensure adherence to statutory deadlines, and protect both debtors and creditors from prolonged litigation over exemption claims. Allowing deviation from these clear procedural rules would erode confidence in the bankruptcy system, disproportionately burden debtors, and create opportunities for strategic delay that could prejudice both debtors and other creditors.

Amici believe that, in their roles as a national advocates for consumer debtors, they bring a unique perspective to this case that will be helpful to the court in deciding this matter.

SUMMARY OF ARGUMENT

The trustee wears multiple hats in a bankruptcy case. The trustee acts as a fiduciary on behalf of creditors and determines which (if any) of a debtor's assets to control, sell, distribute or bring into the estate. The trustee, however, may only operate within the confines of the law. *See Law v. Siegel,* 571 U.S. 415 (2014). Under the current Federal Rules of Bankruptcy Procedure Rule 2003 (e) ("Rule 2003")[1], a trustee may not continue a meeting of creditors *sine die,* or without a future date being designated. To "continue" a meeting of creditors without promptly filing a time and date for the continued meeting is the legal equivalent of concluding the meeting.

In the bankruptcy case of Joseph F. Langston, Jr., Appellant, since the trustee did not promptly file notification of a new date and time for a continued meeting of creditors, the meeting was concluded. Eleven months after the meeting of creditors was concluded, Dallas Commodity Company, Appellee, ("Dallas Commodity") filed an objection Mr. Langston's claimed exemptions. As Dallas Commodity's objection was due 30 days after the meeting of creditors was concluded, Dallas Commodity's objection was untimely.

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532 and "Rule" references are to the Federal Rules of Bankruptcy Procedure.

HISTORY

Mr. Langston filed his voluntary Chapter 7 bankruptcy petition on September 6, 2019. (ROA. 47). The meeting of creditors was convened and continued multiple times over the next year and a half. (R. 1796 – 2046; Creditor's Exhibits 47-52 contain the transcripts). At the last meeting of creditors, on May 26, 2021, the trustee once again announced that the meeting was being "continued" but did not announce a time or date for the continued meeting. (ROA. 32.) All parties agree that no further meeting of creditors was held, and 10 months later, on March 9, 2022, the trustee filed a docket entry stating that the meeting of creditors was concluded on May 26, 2021. (ROA. 40 Docket No. 77).

Under Federal Rule of Bankruptcy Procedure Rule 4003 (b)(1), parties have up to 30 days after the meeting of creditors is concluded to object to a debtor's exemption. Dallas Commodity filed an objection to Mr. Langston's exemptions on April 8, 2022, which was 30 days after the trustee filed his notice but 286 days after the meeting of creditors was concluded. (ROA. 225) (App. Tab 4). Mr. Langston's argument that Dallas Commodity's objection was untimely was rejected by both the bankruptcy court, (ROA. 2226, 2254), and the district court, (ROA 4). The district court noted that it was rejecting the timeliness argument because it was bound by this Court's ruling in *Peres v. Sherman (in re Peres)*, 530 F.3d 375, 376 (5th Cir. 2008). (ROA. 4). *Peres* held that a trustee may continue a

meeting of creditors *sine die* as long as the delay was deemed reasonable. The district court, however, was wrong. *Peres* was abrogated when Rule 2003 was amended. Under the current version of Rule 2003, Dallas Commodity's objection was untimely.

ARGUMENT

In 2008, Rule 2003 stated that a trustee could continue the meeting of creditors merely by "announcement at the meeting of the adjourned date and time **without further written notice**." (emphasis added). Under this language, a circuit split developed across the country. A minority of the courts ruled that a meeting of creditors could only be continued by announcing an exact continuation date within 30 days of the original meeting (the "bright-line approach"). *Peres*, 530 F.3d at 377. Most courts, like *Peres*, ruled that the meeting of creditors could be continued *sine die* as long as the continuance was reasonable. *Id*. *Peres* in particular stated multiple times that its holding was based on the lack of a written notice requirement in Rule 2003. *Id. a*t 378–79.

There were two large concerns with this circuit split. One was that the Constitution requires uniformity for both substantive and administrative bankruptcy laws and rules. *Siegel v. Fitzgerald*, 596 U.S. 464, 473-74 (2022). With so many courts lining up on opposite sides in determining how the meeting of creditors may be concluded, objection dates were being applied in vastly different

ways across the country. The other concern was that the "clearly-established" public policy of the Bankruptcy Code has always "encourage[ed] promptness in the filing of objections to exemptions." *Peres*, 530 F.3d at 378. With a majority of the country allowing *sine die* continuation, promptness was not being encouraged.

In 2009, the Bankruptcy Rules Advisory Committee was presented with the challenge of creating "a clear rule prescribing how meetings of creditors are held open so that everyone is aware of the debtor's deadline." Advisory Committee on Bankruptcy Rules, San Diego, CA March 26-27, 2009, at 101, https://www.uscourts.gov/sites/default/files/fr_import/BK2009-03.pdf. "Noting that "[d]ebtors and 'parties in interest' have a stake in knowing with certainty whether a meeting of creditors has been held open and for how long," the Rules Committee decided to amend Rule 2003. *Id.* at 103.

Now, under Rule 2003, the trustee may only adjourn a meeting of creditors by **both** "announcing at the meeting the date and time to reconvene" **and** by filing the new time and date of the continued meeting of creditors on the docket. Under the rule, "[t]he presiding official **must** promptly file a statement showing the adjournment and the date and time to reconvene."[2] (emphasis added.) The added

[2] Rule 2003 was restyled to contain this language on December 1, 2024. At the time that this case was decided by the lower court, Rule 2003 (e) stated "[t]he meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time. The presiding official **shall** promptly file a statement specifying the date and time to which the meeting is adjourned." (emphasis added).

language was "designed to prevent indefinite adjournment." 9 *Collier on Bankruptcy* ¶ 2003.05 n.3 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.2014) as quoted in *Jenkins v. Simpson (in re Jenkins)*, 784 F.3d 230, 236 (4th Cir. 2015). Therefore, when Rule 2003 was amended to require written notice, *Peres* was abrogated, and this Court should hold that Dallas Commodity's objection was untimely.

I. PERES CANNOT BE RECONCILED WITH THE LANGUAGE OF AMENDED RULE 2003.

While this Circuit is bound by a prior decision "absent an intervening change in the law, such as by a statutory amendment," once the prior precedent has been either expressly or implicitly overruled this Court has the "authority *and obligation* to declare and implement this change in the law." *Stokes v. Sw. Airlines*, 887 F.3d 199, 204 (5th Cir. 2018) (internal quotations and citations omitted)(emphasis in original). "A mere 'hint' of how the [Supreme] Court might rule in the future, however, will not suffice; the intervening change must be unequivocal." *Id.* (internal quotations and citations omitted).

The Advisory Committee Note states that this change was intended to be stylistic only, and both versions support our argument.

Even if *Peres* had not explicitly stated that its holding was based upon the lack of a written notice requirement, the unequivocal contradiction between the ruling allowing *sine die* adjournment and the amended Rule 2003 would still require that *Peres* be overruled. Continuing a meeting of creditors s*ine die* is simply not allowed under the modified rule.

When there is unambiguous language of a bankruptcy rule or statute, the law must be interpreted according to that language. "There is a basic difference between filling a gap left by Congress' silence and rewriting rules that Congress has affirmatively and specifically enacted." *Lamie v. U.S. Tr.,* 540 U.S. 526, 538 (2004). In 2008, when Rule 2003 was silent as to how to correctly continue a meeting of creditors, *Peres* was property decided to fill the gap. Now that the rule has been amended, however, the change in the rule has abrogated *Peres* and this Court is required to use the language of Rule 2003 to determine when the meeting of creditors was concluded.

a. "Must" is Not Permissive.

Rule 2003 is very clear about what steps are required in order to continue a meeting of creditors, and this Court may not sidestep the written notice requirement. "Unlike the word 'may,' which implies discretion, the word 'shall' usually connotes a requirement." *Kingdomware Techs., Inc. v. U.S.*, 579 U.S. 162, 171 (2016). Shall and must are generally legally interchangeable. *See Id.* at 171–72

(noting that the department "*shall* (or *must*)" follow the confines of the statute)(emphasis in original). The use of the word "shall" or "must" in a rule "precludes a court from finding ambiguity" and circumventing the language of the rule. *Jennings v. Rodriguez,* 583 U.S. 281, 300 (2018)(plurality). There is no ambiguity or wiggle room here. A meeting of creditors may only be continued if the meeting is continued in writing and that writing includes the time and date that the meeting will resume. That did not happen in this case. Therefore, Dallas Commodity's objection was untimely.

b. The Statement Must be Filed Promptly.

Peres was also abrogated when Rule 2003 was amended to include a time requirement. Now, a trustee must "promptly" file a notice that the meeting has been continued. With the rule modification, a court may no longer deem that a delay of almost a year was reasonable.

There is no statutory definition given for what length of delay is allowed when "promptly" filing the next meeting of creditors date. In other areas of the law, courts have ruled that a delay of six days could be considered not "prompt." *Guadalajara v. Honeywell Int'l, Inc.,* 224 F. Supp. 3d 488, 504 (W.D. Tex. 2016) (a delay of six days might not be prompt, remedial measures to end workplace harassment). The Supreme Court has held that a delay of 48 hours may often-but not always-be considered "prompt." *Cnty. of Riverside v. McLaughlin,* 500 U.S.

44, 56 (1991) (analyzing promptness in holding a probable cause hearing). While we are unaware of any cases analyzing promptness when continuing a meeting of creditors, cases across multiple disciplines and multiple jurisdictions support the finding that promptness is measured in days, not months. At the very least, Due Process dictates that debtors, creditors, and trustees know of the existence of an objection deadline before the deadline has passed.

c. Courts agree that the use of *sine die* has been abrogated.

Courts that have considered the rule change appear to be unanimous on the understanding that the modified Rule 2003 "prohibits the practice of adjournment *sine die.*" *Jenkins*, *supra*, 784 F.3d at 236. Adding the prompt written notice requirement "inexorably" eliminated the *sine die* approach and adopted a bright-line approach "to the exclusion of any other." *In re Vierstra*, 490 B.R. 146, 151 (Bankr. D. Mass. 2013). *See also Rentas v. P.R. Elec. Power Auth (in re PMC Mktg. Corp.*), 482 B.R. 74, 80 (Bankr. D.P.R. 2012) (noting that the rule change "eliminat[ed] the use of the term *sine die.*"). This Court should act in accordance with the other courts that have analyzed Rule 2003 and follow the bright-line approach.

II. DALLAS COMMODITY HAD SUFFICIENT NOTICE TO FILE A TIMELY OBJECTION.

Dallas Commodity had sufficient notice of the objection deadline to act in this case. A "creditor's actual knowledge of a bankruptcy case creates an

affirmative duty to ascertain the [relevant due] dates." *Wilzig v. Lopez (in re Lopez)*, 192 B.R. 539, 544 (B.A.P. 9th Cir. 1996). Dallas Commodity knew, or should have known, that under Rule 2003 a meeting of creditors can only be continued by prompt written notice. When written notice of a continuance was not filed, Dallas Commodity was implicitly put on notice that, if it needed more time to determine its course of action, it should have objected or filed a motion to extend the time to object within 30 days of the meeting. The objection deadline is strict, and may only be expanded through a motion filed before it has expired. *Taylor v. Freeland & Kronz, 503* U.S. 638, 643 (1992) ("By negative implication, the Rule indicates that creditors may not object after 30 days 'unless, within such period, further time is granted by the court.'")

"Creditors should not be encouraged to sit on their hands during the bankruptcy process." *Otto v. Tex. Tamale Co (in re Texas Tamale Co., Inc.),* 219 B.R. 732, 740–41 (Bankr. S.D. Tex. 1998). "Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality." *Taylor*, *supra,* 503 U.S. at 644. Dallas Commodity knew its deadlines and failed to act. This Court is required to apply Rule 2003 as written and hold that Dallas Commodity's objection was untimely.

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III. PUBLIC POLICY SUPPORTS THE USING THE BRIGHT-LINE APPROACH.

Bankruptcy is a terrifying process for the average debtor, and nothing strikes more fear in debtors' hearts than the concern that they will lose their property. Filing a bankruptcy puts a debtor in a very vulnerable position. Debtors constantly ask their counsel questions like "is the trustee going to come to my house? Is the trustee going to look through my cupboards and take my stuff? What about the watch that my dad gave me…that is the only thing that I have left of him, is the trustee going to take it?" Until the objection to exemption period has expired, all of a debtor's property is at risk of being seized by the trustee in order to pay creditors, and a debtor feels the weight of that risk every single day.

The objection to exemption period is purposely short because of how essential it is to allow debtors to plan for their future secure in the knowledge that the possessions they have exempted in their entirety are theirs to keep. Debtors need to be able to accept a job not within walking distance or launch a new catering venture without consistently looking over their shoulders or being afraid that they will lose their property and be back at square one. Debtors need to know if they should use the money to fix their car or if fixing the car would essentially be throwing money away if the car is to be taken from them. In short, debtors need to have the ability to move on with their lives.

Bankruptcy was intended for honest but unfortunate debtors who need the assistance of the law to get back on their feet. The very purpose of bankruptcy is thwarted if a debtor is unable to relax. Instead, debtors need to feel secure in their possessions, knowing they can use those possessions to rebuild their financial lives. Rule 2003 was amended to make sure that the vulnerability resulting from a bankruptcy filing is kept to the shortest time necessary.

In this case and under *Peres*, Mr. Langston was kept in limbo for almost a year. He did not have the comfort of knowing that his property was safe and he could rebuild his life. He did not even have a definite date for a new creditors meeting. Such an outcome is contrary to the intent of the Rule 2003 change and contrary to the bankruptcy public policy that change was designed to implement.

CONCLUSION

The Rules Committee chose to amend Rule 2003 in order to avoid the very concern that is highlighted in this case. Parties in interest need to know exactly when a meeting of creditors has been concluded so they can know when the deadline for objections to exemptions will expire. The change in Rule 2003 abrogated *Peres* and eliminated *sine die* continuances of creditors meetings.

Respectfully submitted this 14th Day of February 2025,

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CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 5th Cir. R. 29.3 because this brief contains 2,922 words, excluding parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This filing complies with Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point type.

Signature /s/ *April Maxwell* **Date: February 14, 2025**
April Maxwell
Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the appellate CM/ECF system on February 14, 2025. All participants that are registered as CM/ECF users will receive service via appellate CM/ECF system.

s/ April Maxwell
April Maxwell
Attorney for *Amici Curiae*

STATEMENT UNDER FED. R. APP. P. 29(a)(4)(E)

No party's counsel authored this amicus curiae brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting this brief; and no person, other than the *amici curiae*, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

Dated: February 14, 2025

/s/ April Maxwell
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